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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,730

11/26/2003

Nicholas Frattalone

P25,565-A USA

7353

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7590

09/21/2006

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EXAMINER

FELTEN, DANIEL S

ART UNIT

PAPER NUMBER

3693

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/722,730	<b>Applicant(s)</b> FRATTALONE, NICHOLAS	
	<b>Examiner</b> Daniel S. Felten	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 4/25/2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1.2.4-6-10-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1.2.4-6-10-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Receipt of applicant's Request for Examination ("RCE") filed April 25, 2006 amending claim 1 and canceling claim 3 and 7-9 is acknowledged. Claims 1, 2, 4-6, 10-25 are pending in the application and are presented to be examined upon their merits.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-6 and 10-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over SBA Communications Corporation Announces 2<sup>nd</sup> Quarter Results; Accelerates Tower Ownership (Aug. 14,1998), SBA website (sbasite.com) and Gross et al (US 2003/0225665).

SBA discloses, *as in claims 1 & 16-25*, a method for long-term leasing by a company of a plurality of properties, two or more of which are separately owned and each of which is with an area where wireless communications facility is needed for a wireless communication network and each of which contains a location desirable for positioning said facility (see SBA, "*site acquisition*", "*site development*", "*leasing negotiation*", also see paragraph 4),

identifying two or more properties to acquire thorough lease (see SBA website "*site development*" and Article, paragraph 4); and

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SBA discloses that it offers a broad array of site acquisition, zoning construction and tower space leasing services to the wireless communication industry comprising an offer to lease each property for a term of years (see Article, paragraph 4),

--It is conventional that a single lump sum payment be made on either the front or back to the lessee's regular payment based upon the terms of the leasing agreement/offer/contract. It is conventional in the art that such terms are negotiated for a property over a period of years. Therefore OFFICIAL NOTICE is taken of the lump sum payment because the SBA provides a broad array of services that are customized to the clients needs (see Article paragraph 4). Thus a Lump sum payment would be an obvious extension to the leasing services provided by SBA to provided greater flexibility to their customers and accommodate the needs of the wireless community. Thus, the ability to be flexible and to customize leasing options/strategies would provide SBA a broader customer base and increase the company's growth and profitability.

SBA fails to disclose, the specific leasing term (or offer) wherein the total rent is less than the aggregate projected period lease payments for each property over the term of use. Gross discloses a method for leasing properties wherein the total rent for a property is less than the aggregate period lease payment over the term of use (see Gross, paragraphs 0011-0017). It would have been obvious for an artisan to recognize the advantages of the aforementioned lease term to achieve the goals of growth and profitability mentioned above, as well as to achieve advantageous accounting treatment for the parties to the transaction where the transaction is structured to enable the lessee to achieve operating lease treatment, thereby avoiding adverse impact on the lessee's balance sheet and increasing ratings. The transaction is also advantageously structured to achieve leverage lease account treatment for the lessor, thereby

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providing favorable operating results on its reported financial statements (see Gross, *field of invention*, paragraph 0002). SBA, therefore would have recognized these advantages and used them to also provide mutually beneficial transactions between both parties as part of the lease negotiation process.

--wherein the properties are parcels on land (see SBA website and article), *as in claim 2*

--wherein at least one wireless communications facility is a part of a communications network (see SBA website and article), *as in claim 4*

--wherein said offer is to lease only a portion of each parcel of land comprising said desirable location, and any necessary access (see SBA website and article), *as in claim 5*

--wherein said offer is to lease said entire parcel of land (see SBA website and article), *as in claim 6*

--Re claims 10-15: the various forms of payment of the lump sum (*shorter term, undivided, in lieu of rent payments, cash, negotiable securities, etc.*) are well known in the art to make it convenient for transactions to take place between parties. Therefore OFFICIAL Notice is taken by the examiner of the aforementioned methods of payment being an obvious extension to the prior art SBA so as to provide a convenient (as well as conventional) transference of funds being well within the ordinary skill in the art.

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*Conclusion*

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (571) 272-6742.

The examiner can normally be reached on Flex.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel S Felten  
Examiner  
Art Unit 3624

DSF  
9/8/2006